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In re Application of:	:	
Kimura, <i>et al.</i>	:	DECISION ON PETITION
Application No. 09/077,029	:	
Filed: May 18, 1998	:	
Attorney Docket No.: JAO40499	:	

This is a decision on the communication filed, via facsimile on August 21, 2003 and supplemented by a petition under 37 C.F.R. § 1.181, filed on September 23, 2003, requesting withdrawal of the holding of abandonment of the above-identified application. A petition fee is not required.

The petition is **granted**.

The application was held abandoned for failure to timely file an Appeal Brief after the filing of the Notice of Appeal on November 09, 2001. A Notice of Abandonment was mailed on August 15, 2003.

Petitioner asserts that a response, including, a petition for a four-month extension of time, and a request for a Continued Prosecution Application (CPA), was timely filed in the U.S. Patent and Trademark Office (PTO) on May 09, 2002. Additionally, the petitioner asserts that a preliminary amendment was filed on June 07, 2002. To support this assertion, petitioner has submitted a copy of CPA and Request for extension of time filed on May 09, 2002, a copy of the preliminary amendment filed on June 19, 2002 and a copy of a return postcard that properly identifies and acknowledges receipt of the response and the preliminary amendment by the Patent and Trademark Office on May 09, 2002 and June 19, 2002, respectively.

A review of the application file record reveals that the above-identified response and preliminary amendment are not of record in the application file and cannot be located. However, M.P.E.P. § 503 states that "A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." The file record indicates that an Information Disclosure Statement (IDS) filed on December 20, 2002, and an IDS filed on July 31, 2003 have not been properly entered and made of record in the above-identified application. Additionally, the application file fee record reveals that multiple checks were received and processed for the above

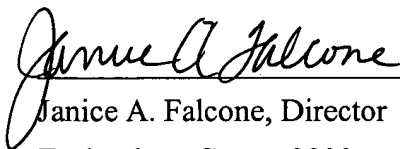
identified application on May 10, 2002, with a mailroom date of May 09, 2002. The checks included a CPA filing fee and a four-month extension of time fee. As such, the evidence provided indicates that the response was timely received in the PTO on May 09, 2002, but lost after receipt thereof.

For the above stated reason, the request is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The copy of the response and the preliminary amendment submitted with the instant petition, are accepted since the response and preliminary amendment that were originally submitted were apparently lost.

The application file is being forwarded to the Technology Center 2800 support staff for entry of the response the preliminary amendment, the IDS received December 20, 2002 and the IDS received July 31, 2003. From there, the application will be forwarded to the examiner for appropriate action.

Inquiries regarding this decision should be directed to Lissi Mojica Marquis at (571) 272-1596



Janice A. Falcone, Director

Technology Center 2800

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JAF:lm